

## **REMARKS**

### **Rejections**

#### ***Rejections under 35 U.S.C. § 101***

##### **Claims 21-23, 25-40, 42-51, 53-68, 70-79, 81-96, 98-107, 109-124, 126-132**

Claims 21-23, 25-40, 42-51, 53-68, 70-79, 81-96, 98-107, 109-124, 126-132 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Applicant has amended the claims to point out that the claimed hierarchical data structure is searchable to identify objects with similar attributes. Applicant respectfully directs the Examiner's attention to page 28, lines 6-23 of the Specification. Here, Applicant describes one example of using the hierarchical data structure to find similar images. In addition, Applicant describes other types of objects that can be searched for using the claimed hierarchical data structure. Thus, the final result of Applicant's claimed invention is useful, tangible and concrete as required under 35 U.S.C. § 101 (*see Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, Annex II (B)(ii), OG Notices: 22 November 2005 (citing AT&T, 172 F.3d at 1358, 50 USPQ2d at 1451)).

Accordingly, Applicant respectfully submits that the invention as claimed in claims 21-23, 25-40, 42-51, 53-68, 70-79, 81-96, 98-107, 109-124, 126-132 is statutory subject matter and respectfully request the withdrawal of the rejection of the claims under 35 U.S.C. § 101.

#### ***Rejections under 35 U.S.C. § 103***

##### **Claims 21-23, 25-40, 42-51, 53-68, 70-79, 81-96, 98-107, 109-124, 126-132**

Claims 21-23, 25-40, 42-51, 53-68, 70-79, 81-96, 98-107, 109-124, 126-132 stand rejected under 35 U.S.C. § 103(a) as being unpatentable Becker 6,301,579 (previously cited) in view of Agrawal, et al. 6,233,575. Agrawal qualifies as prior art only under 35 U.S.C. § 102(e) because it issued after Applicant's effective filing date. Applicant does not admit that Agrawal is prior art and reserves the right to challenge the reference at a later date.

Applicant claims a hierarchical data structure that represents a multidimensional scaling (MDS) space. As defined in Applicant's Specification, and as set forth in the preambles of the independent claims, an MDS space contains points that represent objects, and the distance between two points in the MDS space represent the similarity ("attribute proximities"), between the two objects that are represented by the points.

Becker discloses representing hierarchical data structure as a three-dimensional graphic diagram. Becker does not teach or suggest that the hierarchical data structure represents an MDS space as claimed by Applicant. Becker does not teach or suggest that the three-dimensional graphic diagram is an MDS space or represents an MDS space as claimed by Applicant.

Agrawal discloses a multilevel taxonomy that represents a hierarchy of topics in a text database. Agrawal does not teach or suggest that the taxonomy represents an MDS space as claimed by Applicant. Agrawal does not teach or suggest that the text database is an MDS space or represents an MDS space as claimed by Applicant.

Because neither Becker nor Agrawal teach or suggest an MDS space as claimed by Applicant, the combination of Becker and Agrawal cannot be properly interpreted as doing so. Therefore, the combination cannot render obvious Applicant's invention as claimed in claims 21-23, 25-40, 42-51, 53-68, 70-79, 81-96, 98-107, 109-124, 126-132, and Applicant respectfully requests the withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) over the combination of Becker and Agrawal.

### **SUMMARY**

Claims 21-23, 25-40, 42-51, 53-68, 70-79, 81-96, 98-107, 109-124, 126-132 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Sue Holloway at (408) 720-8300 x309.


### **Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR  
& ZAFMAN LLP

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